

Overview of CERCLA

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Introduction

- CERCLA is the Comprehensive Environmental Response, Compensation, and Liabilities Act signed into law in 1980 (also called “Superfund”).
- CERCLA designed as a “reactive” law, intended to address sites with significant contamination from hazardous substances.
- Established to respond to several “mega” sites such as love canal, “valley of the drums”, etc.

Introduction (continued)

- Reauthorized 1986 (SARA)
- Brownfields Amendments (2002)



Primary Aspects of CERCLA

- Release reporting (notification)
- Site identification
- Site assessment and priority ranking
- Response actions
- Right-to-know/community planning

CERCLA and the NCP

- CERCLA is the law (42 USCA § 9601 *et seq.*) Preamble: “An act to provide for liability, compensation, cleanup and emergency response for hazardous substances released into the environment and the cleanup of inactive hazardous waste disposal areas”

Parts of CERCLA

- Title I – Hazardous Substances Releases, Liability, Compensation
- Title II – Hazardous Substance Response Revenue Act of 1980 (“The Superfund Tax”)
- Title III – Emergency Planning and Community Right-to-Know
- Title IV- Radon Gas and Indoor Air Quality Research
- Title V- Tax Code Amendments (includes UST Trust Fund provisions, etc.)

CERCLA Title I

- Section 103- definitions
- Section 104- Response Authorities (allows EPA and agencies with EPA agreements i.e. States and Tribes to respond to hazardous substance releases)
- Section 105 – Establishes the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)
- Section 106- Abatement Actions
- Other sections for liability, cleanup standards, penalties, Federal facilities, etc.

NCP

- CERCLA is the law, NCP is the body of regulations dealing with CERCLA
- 40 CFR Part 300
- Available at
<http://www.epa.gov/oilspill/pdfs/40cfr300.pdf#search=%22NCP%20cfr%22>
- Covers both CERCLA and the Oil Pollution Act (OPA)

NCP (Continued)

- Subpart A – Definitions
- Subpart B- Responsibility and Organization for Response (established National and Regional Response Teams, procedures for reporting, federal and state response roles, etc.
- Subpart C-Planning and Preparedness (includes federal contingency plans, Title III local emergency response plans, OPA response plans, etc.

NCP (continued)

- Subpart D-Operational Response Phases for Oil Removal
- Subpart E-Hazardous Substance Response
- Subpart F-State Involvement
- Subpart G-Trustees
- Subpart H-Involvement by “Other Persons”

NCP (continued)

- Subpart I-Administrative Record
- Subpart J-Use of Dispersants (Chemical Treatment of sites)
- Subpart K-Federal Facilities
- Subpart L-NCP and Involuntary Acquisition of Property by the Government

NCP (Continued)

- Appendix A – Hazard Ranking System (how to do the scoring to determine if a site is an NPL candidate)
- Appendix B-National Priorities List (actual list of sites)
- Appendix C-Test procedures
- Appendix D-Response Actions and Methods
- Appendix E-Oil Spill Response (Coast Guard lead agency, in coordination with EPA)

Release Reporting

- Only for CERCLA hazardous substances as included in § 302.4 of the NCP
- Reportable quantities established by § 302.4 of the NCP
- There are exempted substances (“Petroleum exclusion”), naturally occurring, routine degradation of water systems, part of home or structure, etc. (“Limitations on Response” for these situations in CERCLA.
- Most commonly licensed radioisotopes are considered hazardous substances under CERCLA.

Release Reporting

- EPA Spill Line or National Response Center (800-424-8802)
- State Emergency Preparedness and KDHE (785-296-1679)
- Don't wait to report – penalties, fines and potential criminal penalties can be levied by EPA

Site Identification and Assessment

- Sites identified by a variety of mechanisms- citizen's complaints, referrals from EPA (spill line calls), self-reporting, Phase II ASTM assessments, other state, local and federal agencies
- Sites usually assessed by KDHE in Kansas under EPA Cooperative Agreement
- For sites with identified releases, these are entered into CERCLA Identification System (CERCLIS)

Site Assessment (continued)

- Possible site outcomes: no further action, referred to a state remedial program or trust fund, referral to EPA for a removal action
- For a site with no PRPs identified that requires additional assessment, other phases may be conducted leading up to HRS listing or determining a PRP for a state program (or deferral to KDHE orphan sites program)
- Sites that pose the most risk may be listed on the NPL

General types of sites

- Emergency Response
- Time-Critical
- Longer-term remedial sites
- EPA-lead vs. State lead
- HRS Ranking and the NPL
- NPL Sites (usually the most complex, no PRPs, etc.)















Site Cleanup

- After completion of assessment, remediation may be required
- Usually separated into removal and remedial components
- If ground water is involved, may be long-term remediation
- Can occur under KDHE or EPA programs

Site Cleanup (continued)

- If listed on NPL, or “NPL caliber”) requirements may be more stringent (need to do RI/FS, etc.)
- KDHE has Voluntary Cleanup program and State Cooperative program with memorandum of agreement with EPA for remedial sites
- Other specific trust funds (Dry Cleaner) and other programs (KARB)

Cleanup Process

- Removal Site: Assessment, Action Memorandum, Removal, Post-removal Assessment and Long-term care (if needed)
- Remedial Site: Assessment, Remedial Investigation/Feasibility Study, Record of Decision, Remedial Design, Remedial Action (and long-term care if needed).



Liability and Legal Issues

- CERCLA has joint and several liability. Multiple PRPs can be drawn into conducting response actions at CERCLA sites.
- EPA can issue Administrative Orders to PRPs to participate.
- Possibility for *de minimus* settlements, prospective purchaser agreements, etc.

Best approach - prevention

- Minimize hazardous substance release potential
- Pollution prevention programs
- Safety training of employees, proper handling, etc.

Best approach – prevention (continued)

- DUE DILIGENCE!!!
- AAI Standards, ASTM Phase I and II – know (as much as you can) what you are getting into especially concerning commercial property.

Summary

- CERCLA is response-driven.
- Prevent releases and use best management practices
- If release occurs rapid reporting and response can minimize impact and need for longer-term response actions **IMPORTANT** – find consultants and contractors who are experienced not only with remediation but with the regulatory process as well.
- State programs may offer a more streamlined process for dealing with previous releases if qualifying.

Where to Get More Information

- EPA website (extensive CERCLA guidance material present)
<http://www.epa.gov/superfund/index.htm>
- KDHE (Bureau of Environmental Remediation)
<http://www.kdheks.gov/environment>
- ATSDR, other federal agencies
- Randy Brown, 785-296-8065
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- RCRA/CERCLA Hotline 800-424-9346